

House Bill 524 (AS PASSED HOUSE AND SENATE)

By: Representatives Burkhalter of the 50th, Willard of the 49th, Jones of the 46th, Rice of the 51st, and Martin of the 47th

A BILL TO BE ENTITLED

AN ACT

1 To create the City of Johns Creek Parks and Recreation Authority; to authorize such
2 authority to acquire, construct, equip, maintain, and operate or contract for services to
3 provide athletic and recreational centers, facilities, and areas, including, but not limited to,
4 playgrounds, parks, hiking, camping, and picnicking areas and facilities, swimming and
5 wading pools, lakes, tennis courts, athletic fields and courts, clubhouses, gymnasiums,
6 auditoriums, youth centers, senior citizen centers, stadiums, performing arts centers, cultural
7 centers, related buildings, golf courses, and the usual and convenient facilities appertaining
8 to such undertakings and extensions and improvements of such facilities; to acquire parking
9 facilities and parking areas in connection therewith; to acquire the necessary property
10 therefor, both real and personal, and to lease or sell any or all of such facilities, including real
11 property; to confer powers and to impose duties on the authority, the determination of which
12 shall be in the sole discretion of the mayor and city council; to provide for the membership
13 and for the appointment of members of the authority; to authorize the authority to contract
14 with others pertaining to such recreational facilities, including the authority to contract for
15 services to operate any facility or portion thereof, to execute leases of such facilities, to
16 convey title to real property of the authority in fee simple, and to do all things deemed
17 necessary or convenient for the operation of such undertakings; to authorize the authority and
18 other political subdivisions to enter into contracts pertaining to uses of such facilities for the
19 term thereof and to pledge to that purpose revenues derived from taxation; to provide that no
20 debt of Fulton County or the City of Johns Creek or other political subdivisions, within the
21 meaning of Article IX, Section III, Paragraph I of the Constitution of the State of Georgia,
22 shall be incurred by exercise of the powers granted; to authorize the issuance of revenue
23 bonds or obligations of the authority; to authorize the collection and pledging of the revenues
24 and earnings of the authority for the payment of such bonds or obligations and to secure the
25 payment thereof; to define the rights of the holders of such bonds or obligations; to make the
26 property of the authority exempt from taxation and assessment; to grant the authority and its
27 members certain immunities; to authorize the issuance of refunding bonds or obligations; to
28 fix the venue or jurisdiction of actions; to provide that bonds be validated as authorized by

Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law"; to provide for construction; to provide for personnel; to provide for conveyance of property upon dissolution; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "City of Johns Creek Parks and Recreation Authority Act."

SECTION 2.

(a) There is created a body corporate and politic to be known as the City of Johns Creek Parks and Recreation Authority, which shall be deemed to be a political subdivision of the State of Georgia and a public corporation. By that name, style, and title, said body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity, except that the authority or the trustee acting under the trust indenture shall in no event be liable for any torts committed by any of the officers, agents, and employees. The authority shall not be a state institution nor a department or agency of the state but shall be an instrumentality of the state, a mere creation of the state, having a distinct corporate entity and being exempt from the provisions of Article 2 of Chapter 17 of Title 50 of the O.C.G.A., the "Georgia State Financing and Investment Commission Act." The authority shall have its principal office in the City of Johns Creek and its legal situs for the purposes of this Act shall be Fulton County. The authority is granted the same exemptions and exclusions from taxes as are now granted to cities and counties for the operation of facilities similar to facilities to be operated by the authority as provided under the provisions of this Act.

(b) The authority shall consist of five members who shall be residents of the City of Johns Creek and who shall be appointed by the mayor. An appointment by the mayor must be confirmed by a majority vote of the City of Johns Creek councilmembers and mayor or such appointment shall not be effective. The mayor shall initially appoint two members for terms of two years each, two for terms of four years each, and one for a term of six years. After expiration of the initial terms, the terms of all members shall be six years. If at the end of any term of office of any member, a successor to such member has not been appointed, the member whose term of office has expired shall continue to hold office until a successor is elected. A majority of the authority shall constitute a quorum.

(c) One member of the council or the mayor of the City of Johns Creek may be appointed to serve as a member of the authority.

(d) Any member of the authority may be selected and appointed to succeed himself or herself. Immediately after such appointments, the members of such authority shall enter upon their duties.

(e) Any vacancy on the authority shall be filled in the same manner as was the original appointment of the member whose termination of membership resulted in such vacancy, and the person so selected and appointed shall serve for the remainder of the unexpired term.

(f) The authority shall elect one of its members as chairperson and one of its members as vice chairperson. The clerk of the City of Johns Creek shall be the secretary and treasurer. Said clerk shall not be a member of the authority.

(g) Three members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority.

(h) The members of the authority shall be reimbursed for all actual expenses incurred in the performance of their official duties out of funds of the authority.

(i) The authority shall make rules and regulations for its own government. It shall have perpetual existence.

(j) Any member of the authority may be removed from office by the mayor for failure to perform his or her duties as a member of the authority. Any such removal must be confirmed by a majority vote of the city councilmembers and mayor, or such removal shall not take effect. Such failure shall include without limitation absence from three consecutive meetings of the authority, unless excused by reasonable grounds as determined by the mayor. Any office so vacated shall be filled within 60 days by appointment as provided in subsection (e) of this section. The new appointee shall serve the remainder of the unexpired term to which he or she is appointed.

SECTION 3.

(a) As used in this Act, the term:

(1) "Authority" shall mean the City of Johns Creek Parks and Recreation Authority created in Section 2 of this Act.

(2) "Cost of the project" shall embrace the cost of acquisition and construction; the cost of all lands, properties, rights, easements, and franchises acquired and the cost of all conveyances in fee simple of the authority's title thereto and leases thereof; the cost of all machinery and equipment and financing charges and interest prior to and during construction and for one year after construction; the cost of engineering, architectural, fiscal, and legal expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses and such other expenses as may be necessary or incident to the financing authorized by this Act; and the cost of the

1 acquisition and construction of any project and the placing of the same in operation. Any
2 obligation or expense incurred for any of the foregoing purposes shall be regarded as a
3 part of the costs of the project and may be paid or reimbursed as such out of the proceeds
4 of revenue bonds issued under the provisions of this Act for such projects.

5 (3) "Mayor" shall mean the Mayor of the City of Johns Creek.

6 (4) "Project" shall be deemed to mean and include the acquisition, construction,
7 equipping, maintenance, and operation of athletic and recreation centers, facilities, and
8 areas, including, but not limited to, playgrounds, parks, hiking, camping, and picnicking
9 areas and facilities, swimming and wading pools, lakes, tennis courts, athletic fields and
10 courts, clubhouses, gymnasiums, auditoriums, youth centers, senior citizen centers,
11 stadiums, museums, related buildings, golf courses, and the usual and convenient
12 facilities appertaining to such undertakings and extensions and improvements of such
13 facilities; the acquisition of parking facilities or parking areas in connection therewith;
14 the acquisition of the property necessary therefor, both real and personal, and the lease
15 and sale of any part or all of such facilities, including real or personal property, so as to
16 assure the efficient and proper development, maintenance, and operation of such
17 recreational facilities and areas deemed by the authority to be necessary, convenient, or
18 desirable.

19 (5) "Revenue bonds," "bonds," and "obligations" mean revenue bonds as defined and
20 provided for in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond
21 Law," and such type of obligations may be issued by the authority as authorized under
22 the "Revenue Bond Law" and any amendments thereto and, in addition, shall mean
23 obligations of the authority, the issuance of which are specifically provided for in this
24 Act.

25 (b) Any project shall be deemed "self-liquidating" if, in the judgment of the authority, the
26 revenues and earnings to be derived by the authority therefrom, including the anticipated
27 revenues and earnings from the lease of any project, and all properties used, leased, and sold
28 in connection therewith will be sufficient to pay the cost of acquiring, operating, maintaining,
29 repairing, improving, and extending the project and to pay the principal of and interest on the
30 revenue bonds which may be issued to finance, in whole or in part, the cost of such project
31 or projects.

32 **SECTION 4.**

33 (a) The authority shall have the following powers:

34 (1) To have a seal and alter the same at its pleasure;

35 (2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and
36 personal property of every kind and character for its corporate purposes;

(3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, real property or rights or easements therein or franchises necessary or convenient for its corporate purposes, to use the same so long as its corporate existence shall continue, to lease or make contracts with respect to the use of the same, or to dispose of the same in any manner it deems to the best advantage of the authority. If the authority shall deem it expedient to construct any project on any lands, the title to which shall then be in the State of Georgia, the Governor is authorized to convey for and in behalf of the state title to such lands to the authority upon payment to the State of Georgia for the credit of the general fund of the state of the reasonable value of such lands upon the receipt of such lawful consideration as may be determined by the parties to such conveyance. If the authority shall deem it expedient to acquire and construct any project on any lands, the title to which shall be in the name of the City of Johns Creek, Fulton County or any municipality incorporated in said county, the governing authority or body of said municipalities is authorized to convey title to such lands to the authority upon the receipt of such lawful consideration as may be determined by the parties to such conveyances or upon payment for the credit of the general funds of such county or municipalities of the reasonable value of such lands, such value to be determined by mutual consent of such county or municipality and the authority or by an appraiser to be agreed upon by the governing authority or body of such county or municipality and the chairperson of the authority;

(4) To appoint, select, and employ officers, agents, and employees, including engineers, architectural and construction experts, fiscal agents, and attorneys, and fix their respective compensation;

(5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for the acquisition and construction of projects and leases of projects or contracts with respect to the use of projects which the authority causes to be erected or acquired, including contracts for acquiring, constructing, renting, and leasing of its projects for the use of Fulton County or any municipality in Fulton County, and to dispose by conveyance of its title in fee simple of real and personal property of every kind and character; any and all persons, firms, and corporations and the state and any and all political subdivisions, departments, institutions, or agencies of the state are authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable; and, without limiting the generality of the above, authorization is specifically granted to municipal corporations and counties and to the authority to enter into contracts and lease and sublease agreements with the State of Georgia or any agencies or departments thereof relative to parks and recreation centers, areas, and facilities and relative to any property which such department or agency of the

1 State of Georgia has now or may hereafter obtain by lease from the United States
2 government or any agency or department thereof, and the authority is specifically
3 authorized to convey title in fee simple to any and all of its lands and any improvements
4 thereon to any persons, firms, corporations, municipalities, or the State of Georgia or the
5 United States government, or any agencies or departments thereof, subject to the rights
6 and interest of the holders of any of the bonds or obligations authorized to be issued
7 pursuant to this Act and by the resolution or trust indenture of the authority authorizing
8 the issuance of any of its bonds or obligations as provided in this Act;

9 (6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve,
10 equip, operate, and manage projects as defined in this Act, the cost of any such project
11 to be paid in whole or in part from the proceeds of revenue bonds or other funds of the
12 authority or from such proceeds or other funds and any grant from the United States of
13 America and any agency or instrumentality thereof;

14 (7) To accept loans, gifts, and grants of money, materials, or property of any kind from
15 the United States of America or any agency or instrumentality thereof, upon such terms
16 and conditions as the United States of America or such agency or instrumentality thereof
17 may impose;

18 (8) To accept loans, gifts, and grants of money, materials, or property of any kind from
19 the State of Georgia or any agency, instrumentality, or political subdivision thereof, upon
20 such terms and conditions as the State of Georgia or such agency, instrumentality, or
21 political subdivision thereof may impose;

22 (9) To borrow money for any of its corporate purposes, to execute evidence of such
23 indebtedness, to secure the same, to issue negotiable revenue bonds payable solely from
24 the funds pledged for that purpose, and to provide for the payment of the same and for
25 the rights of the holders thereof;

26 (10) To exercise any power usually possessed by private corporations performing similar
27 functions which is not in conflict with the Constitution and laws of this state;

28 (11) To borrow money for any of its corporate purposes from any banks or other lending
29 institutions and to execute evidence of such indebtedness and to secure the same by
30 assigning all rights to and pledging all funds to be received by the authority from a lease
31 or leases entered into by the authority as the lessor;

32 (12) To do all things necessary or convenient to carry out the powers expressly given in
33 this Act; and

34 (13) To make recommendations to the mayor and City Council of Johns Creek on land
35 acquisitions, facilities, development, and other matters relating to the provisions of
36 recreation and recreational opportunities to the citizens of Johns Creek.

(b) The authority and the trustee acting under a trust indenture are specifically authorized from time to time to sell, lease, grant, exchange, or otherwise dispose of any surplus property, both real and personal, or interest therein not required in the normal operation of the authority and usable in the furtherance of the purpose for which the authority was created.

SECTION 5.

The authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created by this Act, shall have power and is authorized at one time or from time to time to provide by resolution for the issuance of negotiable revenue bonds for the purpose of paying all or any part of the cost as defined in this Act of any one or more projects. The principal of and interest on such revenue bonds shall be payable solely from the special fund provided for in this Act for such payment. The bonds of each issue shall be dated and shall bear interest at such rate or rates as determined by the authority, payable on such dates as determined by the authority. The bonds shall be payable in such medium of payment as to both principal and interest as may be determined by the authority and may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. Such revenue bonds or obligations shall be issued pursuant to and in conformity with the "Revenue Bond Law," and all procedures pertaining to such issuance and the conditions thereof shall be the same as those contained in the "Revenue Bond Law" and any amendments thereto.

SECTION 6.

All revenue bonds issued under the provisions of this Act are declared to be issued for an essential public and governmental purpose, and such bonds and the income thereof shall be exempt from all taxation by the state.

SECTION 7.

The authority may sell such revenue bonds in such manner and for such prices as it may determine to be for the best interest of the authority, and the proceeds derived from the sale of such bonds shall be used solely for the purpose provided in the proceedings authorizing the issuance of such bonds.

SECTION 8.

Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by the "Revenue Bond Law." Any resolution providing for the issuance of

1 revenue bonds under the provisions of this Act shall become effective immediately upon its
2 passage and need not be published or posted, and any such resolution may be passed at any
3 regular, special, or adjourned meeting of the authority by a majority of its members, subject
4 to the provisions of Chapter 14 of Title 50 of the O.C.G.A., governing open and public
5 meetings.

6 **SECTION 9.**

7 Revenue bonds issued under the provisions of this Act shall not be deemed to constitute a
8 debt of the State of Georgia or of the City of Johns Creek or a pledge of the faith and credit
9 thereof; but such bonds shall be payable solely from the rentals, revenues, earnings, and
10 funds of the authority as provided in the resolution or trust indenture authorizing the issuance
11 and securing the payment of such bonds. The issuance of such revenue bonds shall not
12 directly, indirectly, or contingently obligate the state or any political subdivision thereof,
13 specifically such city, to levy or to pledge any form of taxation whatever therefor or to make
14 any appropriation for their payment, and all such bonds shall contain recitals on their face
15 covering substantially the foregoing provisions of this section. However, the City of Johns
16 Creek or any political subdivision of the state contracting with the authority may obligate
17 itself to pay the amounts required under any contract entered into with the authority from
18 funds received from taxes to be levied and collected for that purpose to the extent necessary
19 to pay the obligations contractually incurred under this section and from any other source;
20 and the obligation to make such payments shall constitute a general obligation and a pledge
21 of the full faith and credit of the obligor but shall not constitute a debt of the obligor within
22 the meaning of Article IX, Section V, Paragraph I of the Constitution of the State of Georgia.
23 When such obligation is made to make such payments from taxes to be levied for that
24 purpose, then the obligation shall be mandatory to levy and collect such taxes from year to
25 year in an amount sufficient to fulfill and fully comply with the terms of such obligation.

26 **SECTION 10.**

27 The revenues, rents, and earnings derived from any particular project or projects and any and
28 all revenues, rents, and earnings received by the authority, regardless of whether such
29 revenues, rents, and earnings were produced by a particular project for which bonds have
30 been issued, unless otherwise pledged, may be pledged by the authority to the payment of
31 the principal of and interest on revenue bonds of the authority as may be provided in any
32 resolution authorizing the issuance of such bonds or in any trust indenture pertaining to such
33 bonds. Such funds so pledged from whatever source received, which may include funds
34 received from one or more or all sources, may be set aside at regular intervals into sinking
35 funds for which provision may be made in any such resolution or trust indenture and which

1 may be pledged to and charged with the payment of (1) the interest upon such revenue bonds
2 as such interest shall become due, (2) the principal of the bonds as the same shall mature, (3)
3 the necessary charges of any trustee or agent of paying such principal and interest, and (4)
4 any premium upon bonds retired by call or purchase. The use and disposition of any sinking
5 fund may be subject to such regulation as may be provided for in the resolution authorizing
6 the issuance of the bonds or in the trust indenture securing the payment of the same.

7 **SECTION 11.**

8 The exercise of the powers conferred upon the authority in this Act shall constitute an
9 essential governmental function for a public purpose, and the authority shall be required to
10 pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction,
11 control, possession, or supervision or upon its activities in the operation and maintenance of
12 property acquired by it or of buildings erected or acquired by it or any fees, rentals, or other
13 charges for the use of such property or buildings or other income received by the authority.
14 The tax exemption provided in this Act shall not include an exemption from sales and use
15 tax on property purchased by or for the use of the authority.

16 **SECTION 12.**

17 The authority shall have the same immunity and exemptions from liability for torts and
18 negligence as the State of Georgia and the officers, agents, and employees of the authority,
19 when in performance of work of the authority, shall have the same immunity from liability
20 for torts and negligence as officers, agents, and employees of the State of Georgia. The
21 authority may be sued the same as private corporations on any contractual obligation of the
22 authority.

23 **SECTION 13.**

24 Any action to protect or enforce any rights under the provisions of this Act or any suit or
25 action against such authority shall be brought in the Superior Court of Fulton County and any
26 action pertaining to the validation of any bonds issued under the provisions of this Act shall
27 likewise be brought in that court which shall have exclusive original jurisdiction of such
28 actions.

29 **SECTION 14.**

30 Bonds issued by the authority shall be confirmed and validated in accordance with the
31 procedures of the "Revenue Bond Law." The petition for validation shall also make party
32 defendant to such action the State of Georgia or any municipality, county, authority, political
33 subdivision, or instrumentality of the State of Georgia or the United States government or

1 any department or agency of the United States government, if subject to being sued and if
2 consenting to same, which has contracted with the authority for the services and facilities of
3 the project for which bonds are to be issued and sought to be validated, and the state or such
4 municipality, county, authority, political subdivision, or instrumentality shall be required to
5 show cause, if any, why such contract or contracts and the terms and conditions thereof
6 should not be inquired into by the court and the validity of the terms thereof be determined
7 and the contract or contracts be adjudicated as part of the basis of the security for the
8 payment of any such bonds of the authority. The bonds, when validated, and the judgment
9 of validation shall be final and conclusive with respect to such bonds and the security for the
10 payment thereof and interest thereon and against the authority issuing the same, the state and
11 any municipality, county, authority, political subdivision, or instrumentality, if a party to the
12 validation proceedings, contracting with the authority.

13 **SECTION 15.**

14 While any of the bonds issued by the authority remain outstanding, the powers, duties, or
15 existence of the authority or of its officers, employees, or agents shall not be diminished or
16 impaired in any manner that will affect adversely the interest and rights of the holders of such
17 bonds, and no other entity, department, agency, or authority will be created which will
18 compete with the authority to such an extent as to affect adversely the interest and rights of
19 the holders of such bonds, nor will the state itself so compete with the authority. The
20 provisions of this Act shall be for the benefit of the authority and the holders of any such
21 bonds and, upon the issuance of bonds under the provisions of this Act, shall constitute a
22 contract with the holders of such bonds.

23 **SECTION 16.**

24 All funds received pursuant to the authority of this Act, whether as proceeds from the sale
25 of revenue bonds or as revenue, rents, fees, charges, or other earnings or as grants, gifts, or
26 other contributions, shall be deemed to be trust funds to be held and applied by the authority
27 solely as provided in this Act, and the bondholders entitled to receive the benefits of such
28 funds shall have a lien on all such funds until the same are applied as provided for in any
29 such resolution or trust indenture of the authority.

30 **SECTION 17.**

31 The City of Johns Creek Parks and Recreation Authority is authorized to appoint, select, and
32 employ officers, agents, and employees and adopt rules and regulations governing their
33 services and fix their respective compensations and terms of employment.

SECTION 18.

This Act and any other law enacted with reference to the City of Johns Creek Parks and Recreation Authority shall be liberally construed for the accomplishment of the purposes of the authority.

SECTION 19.

Should the authority for any reason be dissolved after full payment of all bonded indebtedness incurred under the provisions of this Act, both as to principal and interest, title to all property of any kind and nature, real and personal, held by the authority at the time of such dissolution shall be conveyed to the City of Johns Creek; or title to any such property may be conveyed prior to such dissolution in accordance with provisions which may be made therefor in any resolution or trust indenture relating to such property, subject to any liens, leases, or other encumbrances outstanding against or in respect to said property at the time of such conveyance.

SECTION 20.

All laws and parts of laws in conflict with this Act are repealed.